

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LONG BEACH COMMUNITY COLLEGE)	
DISTRICT,)	
)	
Employer,)	
)	
and)	
)	Case No. LA-SV-126
LONG BEACH COMMUNITY COLLEGE)	
POLICE OFFICERS ASSOCIATION,)	PERB Decision No. 1315
)	
Petitioner,)	February 9, 1999
)	
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION,)	
)	
Exclusive Representative.)	
)	

Appearances: Parker, Covert & Chidester by Spencer E. Covert, Attorney, for Long Beach Community College District; Gerald E. Lennon & Associates by Gerald E. Lennon, Attorney, for Long Beach Community College Police Officers Association; Arnie R. Braafladt, Staff Attorney, for California School Employees Association.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California School Employees Association (CSEA) to a proposed decision (attached) by a Board hearing officer. In the proposed decision, the hearing officer approved a request from the Long Beach Community College Police Officers Association (Association) to sever a unit of college safety officers from the established wall-to-wall classified bargaining unit represented by CSEA in the Long Beach Community College District (District). The

hearing officer found a unit of college safety officers in the District to be an appropriate bargaining unit under the Educational Employment Relations Act (EERA),¹ and ordered a representation election to be conducted.

The Board has reviewed the entire record in this case, including the hearing officer's proposed decision, CSEA's exceptions and the responses thereto filed by the Association and the District. The Board finds the proposed decision to be free of prejudicial error and adopts it as the decision of the Board itself.

ORDER

Accordingly, the Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Security Unit

Shall Include: All campus security officers.

Shall Exclude: All other classified employees, and all management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450,² within 10 days following issuance of this Notice of Decision, the Long Beach Community College District shall post on all employee bulletin boards in each facility of the employer in which members of the

¹**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

unit described in the decision are employed, a copy of the Notice of Decision attached hereto as an Appendix. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

The employee organizations whose names shall appear on the ballot are Long Beach Community College Police Officers Association and California School Employees Association, unless one of these organizations informs the regional director in writing, within 15 days after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting period in such unit if: (1) both of the above-named employee organizations desire to participate in the election; or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

The Board hereby ORDERS that this case be REMANDED to the San Francisco Regional Director for proceedings consistent with this decision.

Members Dyer and Amador joined in this Decision.

APPENDIX



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

CASE: LONG BEACH COMMUNITY COLLEGE DISTRICT
Case No. LA-SV-126
PERB Decision No. 1315

EMPLOYER: Long Beach Community College District
4901 East Carson Street
Long Beach, California 90808
(562) 938-4111

EMPLOYEE ORGANIZATION
PARTIES TO PROCEEDING:

Long Beach Community College Police Officers
Association
P. O. Box 6380
Lakewood, California 90714-6380
(562) 420-1529

California School Employees Association
326 West Katella Avenue, Suite E
Orange, California 92667
(714) 532-3766

FINDINGS:

The Board finds the following unit is appropriate for meeting and negotiating, provided an employee organization becomes the exclusive representative:

Unit Title: Security Unit

Shall Include: All campus security officers

Shall Exclude: All other classified employees, and all management, supervisory and confidential employees.

Pursuant to PERB Regulation section 33450, within 10 days following issuance of this Notice of Decision, the Long Beach Community College District (District) shall post on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed, a copy of this Notice of Decision. The Notice of Decision shall remain posted for a minimum of 15 workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, altered, defaced or covered with any other material.

The employee organization whose names shall appear on the ballot are Long Beach Community College Police Officers Association and California School Employees Association, unless one of these organizations informs the PERB regional director in writing within 15 days after the employer posts the Notice of Decision, that it does not desire to participate in the election. The regional director shall conduct an election at the end of the posting period if: (1) both of the above-named employee organizations desire to participate in the election; or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

Dated: _____ LONG BEACH COMMUNITY COLLEGE
DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY OTHER MATERIAL.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

LONG BEACH COMMUNITY COLLEGE)	
DISTRICT,)	
)	Representation
Employer,)	Case No. LA-SV-126
)	
and)	
)	PROPOSED DECISION
LONG BEACH COMMUNITY COLLEGE)	(12/1/98)
POLICE OFFICERS ASSOCIATION,)	
)	
Petitioner,)	
)	
and)	
)	
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION,)	
)	
Exclusive Representative.)	

Appearances: Parker, Covert and Chidester by Spencer Covert, Attorney, for Long Beach Community College District; Gerald E. Lennon and Associates by Gerald E. Lennon, Attorney, for Long Beach Community College Police Officers Association; Arnie R. Braafladt, Staff Attorney, for California School Employees Association.

Before Jerilyn Gelt, Hearing Officer.

PROCEDURAL HISTORY

On March 20, 1997, the Long Beach Community College Police Officers Association (Association) filed a request with the Public Employment Relations Board (PERB or Board) to sever a unit of college safety officers¹ from the established wall-to-wall classified bargaining unit represented by the California School Employees Association (CSEA) in the Long Beach Community College

¹The unit was described in the severance request as consisting of "college police officers, corporals and sergeants." It was later clarified that these were proposed new titles for the position of "college safety officer", and the request was amended to reflect the current title.

District (LBCCD or District).² In their initial responses, CSEA opposed the request, and the District took a neutral position.

A settlement conference held on June 13, 1997, was unsuccessful, and a formal hearing was scheduled for September 1997. The severance hearing was later taken off calendar and the case placed in abeyance pending resolution of an unfair practice charge filed by CSEA against the District. The hearing was rescheduled for February and subsequently held on April 6, 7, and 8, 1998.

In an effort to settle the matter, on March 25, 1998, the District stated that it did not oppose a separate unit of safety officers and requested an election. CSEA rejected the District's request, and the hearing was held as scheduled. Briefs were filed and the case was submitted for decision on July 13, 1998.

FACTS

Community of Interest Factors

At the time of the hearing, there were 17 college safety officer (CSO) positions, 15 of which were filled. In addition to

²PERB Regulation 33700 provides, in pertinent part (PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.):

- (a) An employee organization may file a request to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provisions of Article 2 (commencing with Section 33050). All provisions of Article 2 and Article 4 of this Chapter shall be applicable to a severance request except as provided in this Article 7.

the CSOs, the department employs a lieutenant and chief of police.³ The CSOs at LBCCD have gone through 9 classification changes in the last 22 years. The CSO position has evolved from an unsworn one (security guard) which required no peace officer training, to both sworn and non-sworn positions, to the current position requiring full POST⁴ basic certification (633 hours of peace officer training). In addition to their specialized training (and unlike other District classified employees), CSOs must pass both a physical ability evaluation and a psychological examination in order to be hired.

CSOs are deputized and authorized under Penal Code sections 830.6 and 830.32 to investigate, arrest, detain and prosecute throughout the state. CSOs are subject to the provisions of what is commonly known as the Peace Officers Bill of Rights⁵ or AB 301. AB 301 provides a different set of due process protections for the discipline and investigation of officers.

As part of their job duties at LBCCD, the CSOs patrol the campuses by foot, bicycle and car to ensure that the campuses are safe and secure; respond to medical emergencies, fights and fires; enforce parking regulations; issue traffic citations;

³It is the District's intent to reorganize the police department into a more aggressive law enforcement agency. As part of this reorganization, the department intends to hire four new supervisory officers to oversee the CSOs on each shift.

⁴POST is the Peace Officers Standards and Training course administered by the State of California.

⁵The Police Officers Bill of Rights is codified at Government Code section 3300 et seq.

appear in court; participate in special assignments and investigations; serve search warrants and make arrests. The CSOs complete a daily log detailing their activities.

CSOs wear a blue uniform which includes special shoes, a shoulder patch, badge, name tag, equipment belt with handcuffs, pepper spray and a baton (for which they receive special training), and a bulletproof vest. On bike patrol, their clothing consists of a polo shirt with the word "police" printed on the back, navy blue shorts or pants, a windbreaker and a helmet. CSOs do not carry firearms. No other District employees are required to wear uniforms.

The CSOs are assigned to the college safety offices at the District's two campuses, the Liberal Arts College and the Pacific Coast Campus. There are CSOs on duty twenty-four hours a day, 52 weeks a year, including holidays. They work primarily in three shifts (morning, afternoon and graveyard) with a late afternoon floating shift. Graveyard shift personnel receive a \$1.00 per hour shift differential. Unlike other classified bargaining unit employees, CSOs do not have a duty free lunch period.

CSOs interact with other bargaining unit members in the course of their duties, sometimes eating lunch with them. They also issue traffic citations to both classified and certificated employees. Although an infrequent occurrence, CSOs have been involved in investigations and arrests of bargaining unit members.

Efficiency of Operations

Personnel Director Dale Hanson testified that he did not believe the creation of a separate unit of CSOs would adversely impact the District's operations. Police Chief Mike Hole testified that he did not feel the creation of a separate unit would affect the police department "one way or the other".

Bargaining History

On May 18, 1977, subsequent to a request filed by CSEA, the parties agreed to a comprehensive classified bargaining unit entered into an EERB⁶ consent election agreement.⁷ CSEA won the election⁸ and was certified as the exclusive representative for the classified unit on June 23, 1977. Since that time, it has negotiated seven multi-year contracts, as well as amendments. Several provisions in the contracts have dealt solely with CSOs, who are consulted during negotiations when issues arise pertaining to them.

In 1989, CSEA negotiated a side letter agreement with the District regarding the CSOs which was later incorporated as part of Article 33 in the 1994-1997 contract. The side letter provides an opportunity for CSOs to appeal a written reprimand in a nonevidentiary administrative hearing. CSEA Senior Labor Relations Representative Jim Walker, who drafted the provision,

⁶Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

⁷PERB Long Beach Community College District Case File No. LA-R-571.

⁸The choices on the ballot were CSEA and No Representation.

testified that it was necessary because AB 301 confers on the CSOs a right to an administrative appeal of a written reprimand. Other classified employees are not entitled to this right under the rules and regulations of the Personnel Commission. Association President Vernon Gates testified that the provision was negotiated without the knowledge, consent or ratification of the CSOs.

In 1990, CSEA and the District reached two memoranda of understanding (MOUs) regarding CSO overtime rights and procedures. In 1994, CSEA proposed, negotiated and entered into an MOU with the District regarding the use of bicycles by CSOs. CSEA and the District also negotiated agreements providing the CSOs with a four day, ten hour work week and authorizing the use of armed guards during high risk periods. In 1995, CSEA proposed and the District agreed to contract language providing for a joint committee, with input from the CSOs to develop a policies and procedures manual for the campus security department.⁹

CSEA has filed numerous grievances on behalf of officers relating to overtime assignments¹⁰ and other issues such as violations of the disciplinary process, improper evaluations and out-of-class pay. Many of these grievances have been resolved in mediation; others have gone to arbitration.

⁹According to testimony, the manual was never completed.

¹⁰Many of the grievances regarding overtime were filed on behalf of CSO Alex Bruckner, who retired shortly before the hearing.

There was substantial testimony from CSEA officers as to the disproportionate amount of time expended by CSEA in pursuing issues relating to CSOs. Testimony from CSOs, both former and current employees, differed as to the effectiveness of CSEA representation.

There was testimony that CSOs have participated in CSEA. For example, in 1981 CSO Martin Knox was elected CSEA chapter president, and in January 1998, CSO Olga Castillo was appointed to the CSEA negotiating team. CSOs have also worked as job stewards in the department.

POSITIONS OF THE PARTIES

Loner Beach Community College Peace Officer Association

It is the position of the Association that the needs of the CSOs would be better served in a unit separate from other classified employees. The Association argues that the relationship between CSOs and other classified employees is necessarily adversarial at times, given the nature of the CSOs' duties to issue citations, investigate employees, and make arrests. The Association claims that CSEA has failed to satisfy the special interests of CSOs, and cites CSEA's failure to bring several issues important to the CSOs to the bargaining table. These issues include authorization to carry side arms while on duty and the institution of an alternate work week. Finally, the Association asserts that it could provide better legal representation for the CSOs through its association with its

affiliate, the California Organization of Police and Sheriffs (COPS).¹¹

California School Employees Association

CSEA argues that the proposed unit is neither more appropriate than the established unit nor an appropriate unit under the applicable criteria. CSEA further argues that granting the severance request would disrupt a stable and productive bargaining relationship that has existed for 21 years. CSEA claims that it has made significant efforts to bring the special interests of the CSOs to the District's attention in negotiations, grievances and through informal memos and meetings. CSEA also asserts that the CSOs have been given the opportunity to fully participate in the organization as officers, job stewards and members of the negotiations team.

Long Beach Community College District

It is the employer's position that, based on the testimony in this matter, PERB should follow its precedent in Sacramento City Unified School District (1977) EERB Decision No. 30 (Sacramento)¹² and grant the severance petition. According to the District, the record demonstrates that CSOs have a community of interest separate from classified employees. In addition, new requirements and proposed changes in the police department make it likely that conflict of interests between the CSOs and the

¹¹COPS is a federation of city, county and district police associations representing peace officers throughout California.

¹²See discussion infra.

rest of the bargaining unit may occur in the future. The District also points to an incident involving the arrest of a unit member by CSOs as an example of a conflict of interest which currently exists. Finally, should PERB grant the severance request, the District asks that PERB conduct an election for the CSOs to choose their representative.

ISSUE

Should the proposed unit of campus security officers be severed from the existing wall-to-wall classified unit?

DISCUSSION

The Educational Employment Relations Act (EERA or Act)¹³ requires that employees be grouped into an appropriate unit for purposes of collective bargaining. The standards for determining an appropriate unit are set forth in section 3545(a):

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

In Sweetwater Union High School District (1976) EERB Decision No. 4 (Sweetwater),¹⁴ the Board found three presumptively appropriate classified units: instructional aides, office/ technical / business services and operations-support

¹³Unless otherwise noted, all statutory references are to the Government Code. EERA is codified at section 3540 et seq.

services. (See also Foothill-DeAnza Community College District (1977) EERB Decision No. 10; Compton Unified School District (1979) PERB Decision No. 109 (Compton).)

In Compton, the Board stated:

By creating three "presumptively appropriate units" for the classified service, the Board determined that a strong community of interest generally exists among employees in each of these groups. The Board further determined that those units "reflect a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of an insufficiently divided negotiating unit or units." (Antioch Unified School District, supra, EERB Decision No. 3 7 at 7.)

More recently in South Bay Union Elementary School District (1990) PERB Decision No. 816, the Board reiterated its preference for Sweetwater units when it reversed an administrative law judge who had deemed a single "wall-to-wall" unit appropriate for a small school district.

In light of this precedent, when a petition is filed to sever a smaller unit from a presumptively appropriate Sweetwater unit, the burden is on the petitioner to show that the requested unit is more appropriate. (Temple City Unified School District (1995) PERB Decision No. 1110; San Juan Unified School District (1995) PERB Decision No. 1082.) In this case, however, since the existing unit is not a Sweetwater unit, it logically follows that the standard against which the requested unit is judged shifts to whether it is an appropriate unit.

The Board has recognized that negotiating history must be considered as an important factor along with the criteria enumerated in section 3545 when evaluating the severance request. (Livermore Valley Unified School District (1981) PERB Decision No. 165 (Livermore).) However, in Livermore the Board also made it clear that where the existing wall-to-wall unit was established "in an atmosphere of mutual accord" between the parties and absent a full review by PERB as to its appropriateness, the negotiating history will not be granted the deference to which it might otherwise be entitled.

PERB previously dealt with the issue presented in this case in Sacramento. In that case, a separate unit of security officers was sought by two unions and supported by the employer, while CSEA petitioned to represent a wall-to-wall classified unit. PERB held that "strong policy considerations" required a separate unit of security officers:

. . . Security officers are deputized and employed to defend the District's premises from others, be they outsiders, students or other employees of the District. They are empowered to enforce not only the rules and regulations of the District, but also the laws of the City of Sacramento. The employer is entitled to a nucleus of protection employees to enforce its rules and protect its property and persons without being confronted with a division of loyalty inherent in the inclusion of security officers in the same unit with other classified employees. . . .

Thus, to determine whether the proposed unit is appropriate requires balancing community of interest criteria, the efficient

operations of the District, and negotiating history factors in light of the Board's holding in Sacramento.

Community of Interest

There was virtually no testimony regarding the community of interest shared among CSOs and other classified employees. Of course, the collective bargaining agreement between CSEA and the District governs their salary, benefits, and other working conditions. However, the record reflects that the CSOs share common interests among themselves which distinguish them from the remainder of the bargaining unit.

CSOs are sworn peace officers under the Penal Code whose authority extends beyond District boundaries. They are subject to different hiring requirements and training and disciplinary procedures than other employees. They are the only District employees required to wear uniforms and carry safety equipment. Unlike other classified employees, they must work on holidays and maintain a daily log of all their activities. CSOs also have been involved in the investigation and arrest of unit members. These are the same factors which led the Board to establish a unit of security officers in Sacramento, and support a finding that a separate unit of CSOs is appropriate here.

Efficiency of Operations

Absent concrete evidence that a district's operational efficiency will be unduly impaired by an additional set of negotiations, operational efficiency will not be considered a factor which militates against the establishment of another unit.

(Livermore at p. 8.)¹⁵ The adverse impact of an additional unit is typically an argument promulgated by an employer concerned about its resources. In this case, no showing has been made nor has any argument been set forth that the establishment of another unit would have a detrimental effect on the District. To the contrary, District witnesses testified that they foresaw no negative potential in the creation of another bargaining unit. Furthermore, the District has urged PERB to follow its precedent in Sacramento and grant a separate security unit.

Negotiating History

As noted above, the Board in Livermore recognized that a request for severance is factually different from an initial unit determination because negotiating history must be taken into consideration.

The record reflects that CSEA and the District have indeed had a longstanding and stable bargaining relationship, and the needs of the CSOs have been reasonably satisfied. The parties have negotiated successive collective bargaining agreements which, while generally addressing the interests of the unit as a whole, in recent years have included provisions relating specifically to CSOs. CSOs have had input in negotiations and have held positions as officers and job stewards in the organization. CSEA has pursued many grievances in recent years

¹⁵See also Temple City Unified School District, supra, PERB Decision No. 1110; San Juan Unified School District, supra, PERB Decision No. 1082.

over issues concerning CSOs, and has also pursued their interests in less formal settings with the District.

CSEA argues that the successful 21-year negotiating history it has had with the District should not be disrupted by the granting of the severance request. However, negotiating history is but one factor to be considered, and, in this case, it must be given less deference than if the established unit were a presumptively appropriate Sweetwater unit. (Livermore.)

CONCLUSION AND PROPOSED ORDER

The record has established that college safety officers share a community of interest separate and distinct from the remainder of the classified bargaining unit. There is no evidence that efficiency of operations would be impaired by the creation of a separate security unit and, in fact, the Long Beach Community College District (District) supports such a unit. Furthermore, the Public Employment Relations Board (PERB) held in Sacramento City Unified School District (1977) EERB Decision No. 30, that an employer is entitled to a separate unit of security officers. Balanced against these factors, California School Employees Association's long-standing negotiating history with the District does not tip the scales in favor of denying the severance request. Accordingly, a unit of college safety officers is found to be appropriate for meeting and negotiating provided an employee organization becomes the exclusive representative.

The employee organizations whose names shall appear on the ballot are California School Employees Association and Long Beach Community College Peace Officers Association, unless one of those organizations informs the San Francisco PERB Regional Director in writing, within 15 workdays after the employer posts the Notice of Decision, that it does not desire to participate in the election. The Regional Director shall conduct an election at the end of the posting period in such unit if: (1) both of the above-named employee organizations desire to participate in the election, or (2) only one organization desires to participate and the employer does not grant voluntary recognition.

Right of Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing" (See Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) Any

statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs., 32300, 32305 and 32140.)



Jerilyn Gelt
Hearing Officer